



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable John Atchison  
County Attorney  
Cook County  
Gainesville, Texas

Dear Sir:

Opinion No. 0-1667

Re: Whether Navarro Community Foundation is exempt from taxation under House Bill No. 987, Forty-sixth Legislature, Regular Session, or, under the Constitution and General Laws of the State.

We acknowledge receipt of your request for an opinion as to whether the "Navarro Community Foundation" is exempt from taxation.

The "Navarro Community Foundation" was created by House Bill No. 987 of the Forty-sixth Legislature of Texas, Regular Session, Vernon's 1939 Texas Session Laws, page 508. The Act provided that it would be a perpetual, public charitable, non-profit body corporate, with domicile at Corsicana, Navarro County, Texas, for the purposes of promoting the well-being of mankind as follows:

1. The promotion and extension of religion.
2. The promotion of education.
3. The alleviation of human suffering and prevention and control of disease.
4. The acquisition, construction, maintenance, and beautification of public buildings, grounds, and/or works for the encouragement of public, civic betterment.
5. The relief of worthy poor and indigent by and through agencies and institutions legally organ-

ized and operated exclusively for such charitable purposes.

6. The aid of any scientific endeavor or cause, designated and carried on solely to contribute to the betterment of mankind.

The Act further provides that it is created and established for the exclusive purpose of promoting the well-being of mankind in Navarro County, Texas, but, upon unanimous vote of its managing trustees, elsewhere in the State of Texas. Section 14 thereof provides that all of the property, whether real, personal, and/or mixed, of whatever the same may consist, and wherever the same may be situated, shall be exempt from every tax levied and/or assessed by the State, and all of its subdivisions and municipalities.

Your request attacks the exemption in two ways, that is, first, that House Bill No. 987 is unconstitutional; and, second, that if it is not unconstitutional the general exemption statutes do not permit the exemption. We will discuss the questions in that order.

Article 1319, Vernon's Annotated Civil Statutes, provides that there shall be either public or private corporations in this State. It defines a public corporation as one which has for its object the government of a portion of the State. The statute provides that there shall be three kinds of private corporations, to-wit, religious, for charity or benevolence, and for profit.

An examination of House Bill No. 987 discloses that it is not a public corporation within the meaning of that term as defined by the statute; for it does not, in any way, have to do with the government of any portion of the State. Therefore, the "Navarro Community Foundation" must, of necessity, be a private corporation.

While it is true that House Bill No. 987 provides that "Navarro Community Foundation" shall be a "public charitable" corporation, we believe that this term is only descriptive to the objectives of the corporation, and was not an attempt on the part of the Legislature to amend by implication Article 1319 as to the definition of a public corporation.

That House Bill No. 987 is a special law there can be no doubt. That term has many times been defined as an act which relates to a particular person or thing

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of a class. *Clark vs. Finley*, 54 S.W. 343, *Austin Bros. vs. Patton*, 268 S.W. 182, and *Bell County vs. Hall*, 153 S.W. 121. Where a law is general and uniform throughout the State, operating similarly on all persons and localities of a class, it is not a special law. *Allen vs. Kennard*, 116 N.W. 63, and *Ex parte Flake*, 149 S.W. 146. House Bill No. 987 pertains only to the creation and management of the "Navarro Community Foundation" and does not pertain to other corporations of the same class, nor does it grant the same rights and privileges to other corporations of the same class. Therefore, in our opinion, House Bill No. 987 is a special law.

Article XII, Section 1, of the Constitution provides that no private corporation shall be created except by general law.

The Supreme Court in the case of *North Side Railway Company, et al. vs. Worthington, et al.*, 30 S.W. 1035, speaking through Chief Justice Gaines, said:

"Our Constitution provides that corporations shall be created only by general laws, and it would seem that one purpose of the provision was to prevent the Legislature from granting to one corporation special powers or special privileges."

The above quotation of the purposes of Article XII, Section 1, of the Constitution is no more ably demonstrated than in the question at hand. Among other special privileges granted to the "Navarro Community Foundation" was the exemption from taxation.

The Constitution also provides that the Legislature shall not by special law exempt property from taxation. Again, that is what the Legislature has attempted to do by special law.

The Thirty-third Legislature of Texas passed an Act exempting the Young Mens Christian Association from taxation. *Vernon Sayles' Annotated Civil Statutes*, 1941, Article 7507, Subdivision 1 (a). Thereafter the City of San Antonio brought suit against the Y.M.C.A. for taxes. *San Antonio, et al. vs. Y.M.C.A.*, 285 S.W. 844. Justice Cobb, in his opinion said:

"The Legislature is specially prohibited by Article III, Section 56, from passing a

special or local law authorizing the exemption of property from taxation. This was what was attempted to be done in exempting the property of the Y.M.C.A."

We are, therefore, of the opinion that the property of "Navarro Community Foundation" is not exempt from taxation for the reason that the whole of House Bill No. 987 is unconstitutional, in that it is violative of Article XII, Section 1, of the Constitution of Texas. We are of the further opinion that the property is not exempt under Section 14 of House Bill No. 987, because it is an attempt to exempt property from taxation by special law contrary to Article III, Section 56, of the Constitution.

The writer has personal knowledge that Frank N. Drane of Navarro County, Texas, conveyed a large amount of property to the "Navarro Community Foundation". The Foundation, at that time, was an association of citizens of Navarro County, Texas, who had associated themselves together, as trustees, to carry out the purposes of the conveyance. These purposes were the same as those set forth in House Bill No. 987. We also know that the instrument establishing the trust provided that the Foundation should be incorporated under the laws of Texas, if such could be done, but in the event it could not be incorporated, then the trustees would carry out the trust. For that reason we deem it proper to discuss the question of whether the property of the Foundation is exempt under the general exemption statutes.

Article VIII, Section 2, of the Constitution provides that the Legislature may, by general laws, exempt from taxation all buildings used exclusively and owned by institutions of purely public charity. Pursuant thereto the Legislature passed Article 7150, Section 7, which reads as follows:

"Public charities.- All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to pro-

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vide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

To determine the question, we must arrive at the correct rule of construction. The Constitution provides that all taxes shall be equal and uniform. Article VIII, Section 1. In order for the government to exist, it must have the power to tax, and the property of those accepting the benefits, protection, and privileges of the government must bear their share of this burden. Taxation is, therefore, the rule, and exemption from taxation the exception. *Cooley on Taxation*, 2nd Ed., p. 204; *Athens vs. Mayor, et al.*, 74 Ga. 410.

Exemption being the exception to the general rule, it is not favored, and, when found to exist, the enactment by which it is given will not be enlarged by construction, but, on the contrary, will be strictly construed. *Morris vs. Mason*, 5 S.W. 519; *Santa Rosa Infirmary vs. San Antonio*, 259 S.W. 931, and *Cooley on Taxation*, 2nd Ed., pp. 204, 205.

In the case of *B.P.O.E. Lodge vs. City of Houston* (Civ. App.) 44 S.W. (2d) 498, in construing the expression "purely public charity", the court said:

"The word 'purely' is intended to modify the word 'charity', and not the word 'public', so as to require the institution to have a wholly altruistic quality and exclude from it every private or selfish interest for profit or corporate gain. In law, the word 'purely' is used in the sense of and equivalent to 'only', 'wholly', 'exclusively', 'completely', 'entirely', and 'unqualifiedly'."

This holding was sustained in the case of *City of Palestine vs. Missouri Pacific Lines Hospital Associa-*

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on, 99 S.W. (2d) 311, and upon which the Supreme Court  
 issued writ of error.

Justice Greenwood, in the case of City of Houston  
 v. Scottish Rite Benevolent Association, et al., 230 S.W.  
 2d (Sup. Ct.), said that an institution was one of "purely  
 public charity" where:

"First, it made no gain or profit; second,  
 it accomplished ends wholly benevolent; and,  
 third, it benefitted persons, indefinite in  
 numbers and personalities, by preventing them,  
 through absolute gratuity, from becoming bur-  
 dens of society and the State."

The case of Paschal vs. Acklin, 27 Tex. 199, holds  
 that in a legal sense charity is defined as ex"gift to gen-  
 eral public use", and in the case of State vs. Texas Mutual  
 Life Insurance Company, 51 S.W. (2d) 410, holds that charity  
 in its legal sense implies giving without consideration or  
 expectation of return.

But the Legislature has restricted the general  
 meaning of the words "purely public charities", Article  
 50, Section 7, which reads as follows:

" . . . An institution of purely public  
 charity under this article is one which dis-  
 penses its aid to its members and others in  
 sickness or distress, or at death, without re-  
 gard to poverty or riches of the recipient,  
 also when the funds, property and assets of  
 such institutions are placed and bound by its  
 laws to relieve, aid and administer in any way  
 to the relief of its members when in want,  
 sickness and distress, and provide homes for  
 its helpless and dependent members and to edu-  
 cate and maintain orphans of its deceased mem-  
 bers or other persons."

It is readily seen that the objectives and pur-  
 poses of the Foundation are more comprehensive than the  
 legislative definition.

But, regardless of this, the Constitution provides  
 that the buildings must be used exclusively, and owned by  
 the institution.

The word "buildings" also includes the land upon  
 which they are situated, as has many times been determined.

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a leading case on that question is the case of Cassiano  
vs. Ursuline Academy, 64 Tex. 573.

Justice Greenwood, in the case of City of Houston  
vs. Scottish Rite Benevolent Association, supra, said:

"It does not satisfy the constitutional requirement that use by others was permitted by the owner to obtain revenues to be devoted entirely to the owner's work of purely public charity. Morris vs. Eason, 5 S.W. 519. Nor is the requirement satisfied by the fact that those sharing the use pay no rent. Red vs. Johnson, 53 Tex. 288. The actual direct use must be exclusive on the part of such an institution as is favored by the constitutional provision."  
(Emphasis ours.)

The above holding has been sustained innumerable times, that any property not used exclusively by the institution is not exempt.

It is, therefore, our opinion that the property "Navarro Community Foundation" is not exempt from taxation.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

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APPROVED DEC 18, 1939

*George B. Mason*  
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